

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thanh-Tam Ho	Team: Team # 8	CCRB Case #: 200400928	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 01/29/2004 11:00 PM	Location of Incident: Corner of Bristol Street and Dumont Ave.	Precinct: 73	18 Mo. SOL 7/29/2005	EO SOL 7/29/2005	
Date/Time CV Reported Thu, 01/29/2004 11:32 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 01/29/2004 11:32 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Cherry	08307	926676	073 PCT
2. POM Jason Dalessandro	28563	915541	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Patrick Cherry	Abuse: Officer Patrick Cherry forcibly stopped and questioned § 87(2)(b)	
B.POM Patrick Cherry	Abuse: Officer Patrick Cherry frisked and searched § 87(2)(b)	
C.POM Patrick Cherry	Abuse: Officer Patrick Cherry threatened § 87(2)(b) with the use of force.	
D.POM Jason Dalessandro	Abuse: Officer Jason Dalessandro stopped and questioned § 87(2)(b) and § 87(2)(b)	
E.POM Jason Dalessandro	Abuse: Officer Jason Dalessandro frisked and searched § 87(2)(b) and § 87(2)(b)	
F.POM Patrick Cherry	Off. Language: Officer Patrick Cherry made remarks to § 87(2)(b) based upon race.	

Synopsis

On January 29, 2004 at around 11:00PM, § 87(2)(b) ran into his cousin, § 87(2)(b) and § 87(2)(b)'s cousin, § 87(2)(b). The three of them stopped to talk on the shoulder of the street when Officer Patrick Cherry and Officer Jason Dalessandro approached and asked them why they were in the road. § 87(2)(b) stated that they were not in the road and the officers exited their car and Officer Cherry tried to put his hands in § 87(2)(b)'s pockets. § 87(2)(b) pulled away and Officer Cherry pushed § 87(2)(b) against a car and tried to search him. § 87(2)(b) said, "I know my rights. You can't search me," and kept moving to prevent Officer Cherry from searching him. Officer Cherry said, "If you move again, I'm going to bash your face into the hood." Officer Cherry repeated this and finally § 87(2)(b) let Officer Cherry search his coat pockets, out of which he took out a cell phone and keys and put them on the car. At the same time, Officer Dalessandro patted down § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that he was going to make a complaint and Officer Dalessandro said, "You want to be a tough guy? You're a stupid ass nigger." § 87(2)(g)

Summary of Complaint

§ 87(2)(b) a black male, 5'4", 190lbs, § 87(2)(b) -old § 87(2)(b), gave a phone account on February 4, 2004 (encl. 10a) and was interviewed on February 6, 2004 at the CCRB (encls. 11b). § 87(2)(g)

On January 29, 2004, § 87(2)(b) was on his way to visit the house of his sister, § 87(2)(b). As he walked towards § 87(2)(b)'s house, he saw his cousin, § 87(2)(b) and § 87(2)(b)'s cousin, § 87(2)(b) walking towards him. The three of them stopped to talk on the corner of Bristol Street and Dumont Street and, as there was snow on the sidewalk, the three of them stood on the shoulder of the street. After about 5-10 minutes, a black Impala drove up and an officer, PO1, asked them, "What are you doing?" The three men answered, "Nothing. Just talking." PO1 said, "Talking in the middle of the street?" § 87(2)(b) said, "We're not in the middle of the street." PO1 jumped out of the car and put his hands into § 87(2)(b)'s coat pockets (Allegation A & B). In his telephone account § 87(2)(b) stated that PO1 pushed him against the car before he tried to search him. In his interview statement § 87(2)(b) claimed that he pulled away and said, "You ain't got probable cause to be going into my pockets." PO1 said, "Oh, you want to be a tough guy?" § 87(2)(b) said, "I know my rights." PO1 said, "You don't know nothing." PO1 put one hand on § 87(2)(b)'s left waist and one hand on his back and pushed § 87(2)(b) face first into the patrol car (Allegation A). PO1 tried to put his hands in § 87(2)(b)'s pockets and § 87(2)(b) kept turning around to keep PO1 from doing so. § 87(2)(b) continued to assert that PO1 was violating his rights. PO1 said, "If you move again, I'm going to bash your face into the hood" (Allegation C). § 87(2)(b) said, "You're just going to have to bang my face into the hood." PO1 continued to threaten to bash § 87(2)(b)'s face and since PO1 refused to let him go, § 87(2)(b) let PO1 put his hands in his coat pockets (Allegation B). During this time, PO2 exited the car and patted § 87(2)(b)'s and § 87(2)(b)'s pants and coat pockets (Allegation D & E). § 87(2)(b) asked for PO1's badge and PO1 showed his badge and said, "Stupid, stupid." § 87(2)(b) said, "I'm going to file a complaint. You're a stupid mother fucker." PO1 said, "You don't know no damn body. You want to be a tough guy? You're a stupid ass nigger" (Allegation F). The officers drove away.

§ 87(2)(b) gave the following descriptions of the officers:

PO1: male, white, skinny, 30s, 130-140lbs, wearing jeans and a black jacket

PO2: white, male, short, stocky, 5'4", black hair, black coat and blue jeans

§ 87(2)(b)

§ 87(2)(b) gave a phone account on June 1, 2004 (encl. 13a). Numerous attempts were made to interview § 87(2)(b) in person. § 87(2)(b) missed an interview appointment at the CCRB on June 9, 2004 and was not home for an appointment for an interview at his house on June 23, 2004. § 87(2)(g)

There were 3 officers at the scene: 1 black male and 2 white males. The officers told § 87(2)(b) and § 87(2)(b) to get off of the corner and when they told the officers that they had family living nearby, the officers became angry, exited their cars, and put § 87(2)(b) and § 87(2)(b) against a fence. An officer grabbed § 87(2)(b) and held him against a car while another officer searched his pockets. The officers searched § 87(2)(b) and § 87(2)(b) and told them to leave. The officers made numerous sarcastic comments, but § 87(2)(b) could not remember what they were. The officers did not threaten to hurt § 87(2)(b). § 87(2)(b) could not remember if the officers used any racial slurs.

§ 87(2)(b)

§ 87(2)(b) gave a phone account on February 25, 2004 (encl. 12a). During her phone account voices were heard in the background discussing the incident and refreshing § 87(2)(b)'s recollection. Numerous attempts were made to interview § 87(2)(b) and between February 20, 2004 and June 14, 2004, 8 telephone calls and 2 letters were mailed. § 87(2)(b) missed an appointment on June 16, 2004 and turned down the investigator's offer to interview her at her home. Her phone statement is summarized as follows:

On January 29, 2003, § 87(2)(b)'s nephew, § 87(2)(b) came into the house and told § 87(2)(b) that 2 officers were searching § 87(2)(b). § 87(2)(b) went outside and heard an officer say, "Shut up or I'll put your fucking face into the ground- into Brownsville ground- you don't know who you're fucking with. Just shut up." An officer, PO1, told § 87(2)(b) to put his hands against the car and searched him.

§ 87(2)(b) thought PO1 looked like a white male, and stated that he was tall, somewhat overweight, and about 6'1" tall.

Attempts to interview other civilian witnesses

The CCRB attempted to interview § 87(2)(b) and § 87(2)(b)'s boyfriend, § 87(2)(b) stated that she would bring § 87(2)(b) and § 87(2)(b) with her to an interview, but did not respond to numerous telephone calls and letters. § 87(2)(b) missed an appointment at the CCRB and refused offers to be interviewed at her home or a more convenient location. The CCRB sought an interview with § 87(2)(b)'s cousin, § 87(2)(b) but § 87(2)(b) refused to give contact information for § 87(2)(b).

Results of Investigation

Officer Statements

Officer Patrick Cherry

Officer Cherry, a § 87(2)(b) old, 6' tall white male weighing 185lbs, filled out a Stop, Question and Frisk Report (encl. 16a), which states that Officer Cherry stopped § 87(2)(b) because he suspected him of having a weapon. The report states that Officer Cherry noticed a suspicious bulge in § 87(2)(b)'s left jacket pocket that turned out to be a cell phone and wallet and used force when he put § 87(2)(b) against a wall/car. Officer Cherry stated that he searched § 87(2)(b) and identified himself verbally and showed his shield. Officer Cherry described § 87(2)(b) as "agitated" and noted that § 87(2)(b) called Officer Cherry a "jackass" and a "cracker." Officer Cherry was interviewed by the CCRB on June 3, 2004 (encl. 14b). Details are as follows:

On January 29, 2004, Officer Patrick Cherry and Officer Jason Dalessandro were driving on Bristol Street when they saw 4-8 young black males standing in the middle of the crosswalk of the intersection talking. Two cars were in front of the officers' car and each car honked at the group, and drove around them when the group did not move. Officer Cherry and Officer Dalessandro pulled up and Officer Cherry asked the men to move. Officer Cherry stated that his only intention in approaching the group was to get them to move out of the street. Most of the members of the group moved out of the street, but § 87(2)(b) grabbed the right side of his waistband and stepped behind someone.

Officer Cherry suspected that § 87(2)(b) had a weapon and he and Officer Dalessandro exited the patrol car and Officer Cherry asked § 87(2)(b) "Do you have a weapon on you? Do you have something you're not supposed to have?" § 87(2)(b) did not respond, and when Officer Cherry made a move to put his hands on the front of § 87(2)(b)'s waistband, § 87(2)(b) slapped away Officer Cherry's hands. Officer Cherry turned § 87(2)(b) around, put his hands around § 87(2)(b)'s waist, and pushed § 87(2)(b) with his hips until he was against the car. § 87(2)(b) yelled things that Officer Cherry could not recall and told Officer Cherry that he was not allowed to frisk him. Officer Cherry frisked § 87(2)(b)'s waist and when he didn't find anything, let him go. § 87(2)(b) yelled, "You can't fucking do this. Give me your name and badge number." Officer Cherry stated his name and shield number and asked § 87(2)(b) for identification. § 87(2)(b) refused and Officer Cherry said, "I'd just like your ID so that I can put it in my paperwork and move on." § 87(2)(b) cursed and yelled at Officer Cherry, but Officer Cherry could not recall what was said. Officer Dalessandro spoke with § 87(2)(b)'s friends and told them, "Listen, this is nothing. Relax." § 87(2)(b)'s friends tried to calm § 87(2)(b) down and § 87(2)(b) finally gave his identification. Officer Cherry left and filled out a Stop and Frisk Report. No one else was frisked at the scene. Officer Cherry did not threaten to push § 87(2)(b)'s face into the car or the ground. Officer Cherry did not use discourteous language and did not call § 87(2)(b) "nigger" or make any offensive remarks based on race to § 87(2)(b).

Officer Cherry stated that in his experience, when someone grabs their waistband they are probably hiding something. Officer Cherry patted him down to see if § 87(2)(b) had a weapon. When shown the Stop and Frisk Report, Officer Cherry stated that he recalled that § 87(2)(b) had a bulge in his waistband area that was a phone and that § 87(2)(b) had called him a "jackass" and a "cracker."

Officer Jason Dalessandro

Officer Dalessandro, a § 87(2)(b) old, 5'4" tall white male weighing 225lbs, was interviewed by the CCRB on June 22, 2004 (encl. 15e). § 87(2)(g)

Officer Dalessandro and Officer Cherry saw 4 men standing in the street. There were no other cars around and when Officer Cherry asked the men to move out of the road § 87(2)(b) stepped behind one of the other men as though he didn't want to be seen. § 87(2)(b) did not grab his waistband. The other three men stepped onto the sidewalk and § 87(2)(b) became loud and remained in the street.

Officer Dalessandro could not recall what § 87(2)(b) said, but Officer Dalessandro and Officer Cherry stepped out of the car to "see what § 87(2)(b) needed." Officer Dalessandro spoke with the three other men to distract them, but never frisked or searched any of the men. Officer Dalessandro did not see Officer Cherry have any physical contact with § 87(2)(b). Officer Cherry did not frisk § 87(2)(b). Officer Dalessandro did not recall if § 87(2)(b) made any offensive remarks to the officers. Officer Dalessandro did not recall if § 87(2)(b) asked for the officers' names and badge numbers. Officer Cherry never pushed § 87(2)(b) into the car. Officer Cherry never threatened to bash § 87(2)(b)'s face into the ground or car. Officer Cherry never called § 87(2)(b) a "stupid ass nigger" and never said, "You don't know shit." § 87(2)(b) never called the officers "crackers." Officer Cherry filled out a UF-250 and the officers resumed patrol. Officer Dalessandro did not fill out UF-250s for the other men because they were free to leave during the interaction. Officer Dalessandro also stated that § 87(2)(b) was free to leave during the interaction. Officer Cherry stopped § 87(2)(b) because he was impeding traffic and did not listen to the officers' instructions to move out of the road.

Police Documents

The **Stop, Question and Frisk Index** indicates that Officer Cherry stopped § 87(2)(b) (encl. 17a). **Roll Call** for the 73rd Precinct for January 29, 2004 (encl. 18a) shows that Officer Cherry was on duty. The **Command Log** for the 73rd Precinct for January 29, 2004 (encl. 19a-b) does not note the incident.

§ 87(2)(b) s and § 87(2)(b) s Criminal Records

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Substantiated CCRB cases that resulted in the imposition of discipline.

Officer Cherry and Officer Dalessandro have never had a CCRB case substantiated against them.

Conclusions and Recommendations

Officer Identification

§ 87(2)(g)

§ 87(2)(b) Officer Cherry filled out a stop and frisk for § 87(2)(b) that matches the incident date and location. In their interviews Officer Cherry and Officer Dalessandro identified themselves as the officers who interacted with § 87(2)(b) and his friends.

Undisputed Facts

It is undisputed that § 87(2)(b) and § 87(2)(b) were standing in the street when Officer Cherry and Officer Dalessandro approached them. § 87(2)(b) protested the officers' questions as to why they were in the street and Officer Cherry exited the car and tried to touch § 87(2)(b). § 87(2)(b) resisted and Officer Cherry pushed him against a car. Officer Dalessandro exited the car and spoke with § 87(2)(b) and

§ 87(2)(b) § 87(2)(g)

§ 87(2)(g)

Credibility

§ 87(2)(g)

§ 87(2)(g)

Force claimed by § 87(2)(b)

§ 87(2)(b) claimed that there were three unidentified officers at the scene, and one or more of them put § 87(2)(b) and § 87(2)(b) against a fence. § 87(2)(b) was uncooperative with the investigation and never gave an interview with officer identifications. § 87(2)(b) denied that this occurred and the investigation could not contact § 87(2)(b) § 87(2)(g)

Allegation A: Officer Patrick Cherry forcibly stopped and questioned § 87(2)(b)

Allegation B: Officer Patrick Cherry frisked and searched § 87(2)(b)

§ 87(2)(b) claimed that the officers asked him and his friends why they were standing in the street and § 87(2)(b) said, “We’re not in the middle of the street.” Officer Cherry exited his car, attempted to search § 87(2)(b) § 87(2)(b) pushed § 87(2)(b) against the car and searched him. In his CCRB interview, Officer Cherry stated that § 87(2)(b) and his friends were standing in the street and he told them to move. § 87(2)(b) s friends moved, but § 87(2)(b) stepped behind someone and grabbed his waistband. Officer Cherry exited his vehicle, attempted to frisk § 87(2)(b) pushed § 87(2)(b) against the car and frisked him. Officer Cherry justified the frisk by stating that § 87(2)(b) s furtive movements indicated that § 87(2)(b) was hiding something, possibly a weapon. Nothing was recovered from the frisk. In the Stop and Frisk Report, Officer Cherry stated that the circumstances that led to the stop and search were that § 87(2)(b) had a bulge in his left jacket pocket and unspecified other reasonable suspicion of criminal activity. Officer Cherry noted that he used force on § 87(2)(b) by putting his hands on § 87(2)(b) and putting him against a car or wall. Officer Cherry searched § 87(2)(b) and recovered a cell phone and wallet. Officer Dalessandro stated that when Officer Cherry told § 87(2)(b) and his friends to move, § 87(2)(b) stepped behind someone and became loud. Officer Cherry spoke to § 87(2)(b) to “see what he needed,” but § 87(2)(b) was free to go during the whole interaction. Officer Dalessandro denied that § 87(2)(b) was pushed against the car, frisked and searched.

There are three levels of interactions that an officer can have with an individual before it reaches the level of arrest (encl. 2a-d). The first level is the level of request for information, at which the individual is not the focus of an investigation and is free to go. The second level is the common law right of inquiry level, at which the officers have “founded suspicion that criminal activity is afoot” (encl. 2a-d). The officer may ask pointed and accusatory questions, but may not detain or frisk or search the individual. The third level is the stop, question and possibly frisk. When an officer has reasonable suspicion, he or she may detain a person in order to investigate his or her suspicion, and in certain situations, may frisk or conduct a limited search of the individual. In order to determine when an individual is stopped, the courts have used a “reasonable man” standard, requiring the following factors to be analyzed: “1) whether the officer’s gun was drawn; 2) whether the individual was prevented from moving; 3) the amount of verbal commands that were given; 4) the content and tone of the commands; 5) the number of officers involved; and 6) where the encounter took place” (encl. 143.). In Officer Cherry’s initial instruction for § 87(2)(b) and his friends to move out of the street, Officer Cherry articulated that he had no designs on § 87(2)(b) as a suspect in an investigation. Officer Cherry never drew his gun, did not prevent § 87(2)(b) from moving, and stated once

for § 87(2)(b) and his companions to move out of the street. Officer Cherry never commanded § 87(2)(b) to stop, only Officer Dalessandro was present and he did not say anything during the interaction, and Officer Cherry remained in his car throughout the initial interaction. New York Search and Seizure states that in determining a stop it is necessary that the language be forceful and intimidating to constitute a forcible stop, or “limited seizure” (encl. 142, 143). § 87(2)(g)

New York Search and Seizure states that furtive movements made by civilians can only constitute reasonable suspicion to justify a stop and frisk when taken in conjunction with other factors (encl. 3c, g). “Overt acts,” such as grabbing one’s waistband may justify a stop and a limited frisk when an officer fears for his safety (encl. 3e). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

New York Search and Seizure states that a bulge may constitute reasonable suspicion depending on “the location of the bulge; whether the officer is able to observe the outline and configuration of a gun; whether the suspect is engaged in menacing behavior; and whether there is some other indication of criminal activity” (encl. 3g). The courts have found that pocket bulges are not “sufficient predicate” for a stop and frisk, since a pocket bulge may be indicative of any number of benign objects (encl. 3g). § 87(2)(g)

§ 87(2)(g) in *Police Department v. Gonzalez and Trigo*, the court found that the officer’s act of frisking a man that he had seen running and adjusting a bulge in his waistband was illegal, noting that the mere acts of running and adjusting a bulge are “consistent with a variety of non-criminal activities and, standing alone cannot justify a reasonable suspicion that a person is armed” (encl. 6h).

§ 87(2)(g)

In order to find misconduct, the courts have found that it is necessary to establish that the officer acted with the “knowledge that he was [acting] improperly, acted without concern for the propriety of his actions, or acted without due and reasonable care that his actions be proper” (encl. 4b). § 87(2)(g)

§ 87(2)(g) In *Police Department v. Dowd and Rose*, the courts found that “an officer is charged to know the law governing searches and seizures, at least to the extent that the law is clear enough to be free from fair dispute about its applicability and meaning. Failure to act in accordance with clear law will generally be presumed to involve fault” (encl. 5b). § 87(2)(g)

Allegation C: Officer Patrick Cherry threatened § 87(2)(b) with the use of force.

Allegation F: Officer Patrick Cherry made remarks to § 87(2)(b) based upon race.

§ 87(2)(b) stated that Officer Cherry said, “If you move again, I’m going to bash your face into the hood” and when § 87(2)(b) stated that he was going to make a complaint Officer Cherry said, “You’re a stupid ass nigger.” Officer Cherry denied that this occurred, but stated that § 87(2)(b) called Officer Cherry a “cracker.” Officer Dalessandro stated that he did not hear Officer Cherry’s conversation with § 87(2)(b) § 87(2)(b) denied that Officer Cherry threatened § 87(2)(b) with force and could not recall if the officers used racial slurs. § 87(2)(g)

Allegation D: Officer Jason Dalessandro stopped and questioned § 87(2)(b) and § 87(2)(b)

Allegation E: Officer Jason Dalessandro frisked and searched § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) stated that Officer Dalessandro frisked § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that unidentified officers searched him and § 87(2)(b). Officer Dalessandro denied that he stopped, frisked or searched anyone at the scene, and Officer Cherry corroborated this. § 87(2)(b) was not cooperative in being interviewed and the CCRB was not able to get contact information for § 87(2)(b) § 87(2)(g).

§ 87(2)(b)

§ 87(2)(b)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: